Supreme Court, U.S.
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No. 01-1533

IN THE

Supreme Court of the United States

SKYE LEONARD, a Minor by and through his Guardian ad Litem, Rebecca Leonard; DONALD LEONARD; REBECCA LEONARD; and BRIELLE LEONARD, a Minor by and through her Guardian ad Litem, Rebecca Leonard,

Petitioners,

v.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

The only question presented by the decision of the court of appeals from which certiorari is sought is:

Whether the court of appeals, applying this Court's settled rules for interpreting arbitration clauses, correctly held that an arbitration clause covering "any disagreement(s) . . . regarding payment of claims" under an insurance policy required arbitration of a dispute concerning the insurer's temporary failure to pay claims because of an erroneous indication that the policy had lapsed?

STATEMENT PURSUANT TO RULE 29.6

Respondent The Equitable Life Assurance Society of the United States ("Equitable") states that its parent companies are AXA and AXA Financial, Inc. and that no publicly held company, other than AXA, owns 10% or more of its stock.

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COUNTERSTATEMENT OF THE CASE

A. Introduction

This petition for certiorari involves a garden-variety contract issue concerning the application of an arbitration clause to the specific facts of a dispute between petitioners and respondents.

Due to an error indicating that petitioners' health insurance policy lapsed, Equitable temporarily failed to pay claims under the policy. Although an arbitration clause that was part of an earlier settlement agreement between the parties required arbitration of "any disagreement(s) . . . regarding payment of claims for medical expense reimbursement under the policy," petitioners filed a federal district court suit, in which each count was predicated on Equitable's failure or refusal to pay claims. The Ninth Circuit reversed the district court's denial of a motion to compel arbitration of this dispute, holding that "'claims for medical expense reimbursement' are at the heart of [petitioners'] suit" and "[a]ccordingly, [petitioners'] claims fall within the arbitration provision."

The Ninth Circuit correctly decided this case, on its own particular facts, applying this Court's settled rule that arbitration clauses should be liberally construed, and that any doubts concerning the scope of an arbitration clause should be resolved in favor of arbitration. The decision creates no conflict with any decision by another court of appeals or any decision of this Court. The decision raises no question of any significance to anyone but the parties to this case. Indeed, the Ninth Circuit's decision is unpublished and

accordingly creates no precedent for any other case. In short, there is nothing about the decision that warrants review by this Court.

B. The Policy and Release

In 1982, petitioner Donald Leonard purchased a medical insurance policy (the "Policy") from respondent Equitable. (Pet. 3.)[1] Since then, Equitable has paid approximately $200,000 in benefits under the Policy, mostly in relation to the tragic condition of Leonard's son, petitioner Skye Leonard, who is a quadriplegic with cerebral palsy. (ER 111, 115.) At times, Equitable has denied claims under the Policy. When this has happened, petitioners have sued Equitable, alleging bad faith and seeking compensatory and punitive damages. Petitioners have brought three such lawsuits, including this one. The first lawsuit was settled in 1994. The second lawsuit was settled under the terms of a Release and Settlement Agreement (the "Release") in July of 1999. The Release provided for payments to petitioners totaling millions of dollars, together with lifetime coverage under the Policy for Skye Leonard, without requiring any payment of premiums. In exchange, petitioners released all claims against Equitable and agreed to the arbitration clause that is the subject of the petition. (ER 112-13.)

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1. References to "Pet. __" are to petitioners' Petition for Writ of Certiorari. References to "ER __" are to Appellant's Excerpts of Record filed with the Ninth Circuit.

C. The Arbitration Clause

The Release contains a broad arbitration clause which requires arbitration of "any" disputes "regarding" the payment of claims under the Policy. The arbitration clause, Paragraph 9 of the Release, reads as follows:

> In the event *any disagreement(s)* should arise between EQUITABLE and CLAIMANTS *regarding payment of claims for medical expense reimbursement under the POLICY*, including, *but not limited to*, disagreements regarding whether claims submitted to EQUITABLE are covered claims under the POLICY, and whether CLAIMANTS have reasonably pursued and exhausted the governmental benefits referred to in Paragraph 7 (d) of this RELEASE, the parties will, and hereby do agree to, utilize a neutral third party ("Neutral") to resolve said disagreement(s). The Neutral's decisions regarding such disagreements shall be final and binding on EQUITABLE and CLAIMANTS, and neither EQUITABLE nor CLAIMANTS may challenge the Neutral's decision by means of appeal or litigation or otherwise. . . . The Neutral shall have the power to award sanctions to either party not to exceed fifteen thousand dollars ($15,000) per disagreement. However, the Neutral shall have no power to award attorney fees.

(ER 75, emphasis added.)

The arbitration clause was important to Equitable. Having already spent years litigating with petitioners in court, Equitable insisted on a procedure for resolving any future

disagreements regarding the payment of claims that would materially reduce the costs and incentives for protracted and unnecessary litigation. *See Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 510-511 (1974) (arbitration "avoid[s] the costliness and delays of litigation").

D. The Claims in This Lawsuit

Petitioners' claims in this lawsuit arise out of an unfortunate mistake that resulted in the temporary denial of payments to Skye Leonard under the Policy. As noted above, Equitable agreed under the Release to provide lifetime coverage to Skye Leonard and to waive payment of any premiums. Due to miscommunications, the waiver of premiums was not properly recorded in Equitable's computers. As a result, petitioners were notified that the Policy had lapsed for failure to pay premiums. When petitioners submitted claims for medical expenses under the Policy, those claims were initially denied. (ER 105-08.)

Equitable has since fully acknowledged this mistake, paid all the claims that had mistakenly been denied, apologized for the mistake, and instituted new claims procedures that will ensure the mistake does not happen again. (ER 113-14.)

Nevertheless, petitioners filed their amended complaint, on March 15, 2000. (ER 21.) In that complaint, petitioners expressly allege that the factual basis of each claim is the (mistaken) denial by Equitable of Skye Leonard's claims for medical reimbursement. For example, petitioners allege:

- For their first cause of action, that "Equitable . . . failed to honor [its] obligation to pay Plaintiffs for the necessary medical treatment incurred by Skye" (ER 30, ¶ 38; *see id.* 29-30, 32, ¶¶ 30, 35, 37-38, 47);

- For their second cause of action, that Equitable "breached the terms of the [Release] by denying payment on Skye's medical bills" (ER 34-36, ¶¶ 55, 57, 63);

- For their third cause of action, that "Equitable has failed, and continues to fail, to pay Plaintiffs' claims for medically necessary expenses and supplies" (ER 38, ¶ 75; *see id.* ¶ 73); and

- For their fourth cause of action, that Equitable's "malicious administrative indifference in the continued denial of coverage and rejection of the requests for payment has and continues to force great emotional hardship on each of the Plaintiffs." (ER 39, ¶ 78; *see id.* 40, ¶¶ 82-83.)

E. The Decision by the Ninth Circuit

Equitable moved to compel arbitration under the arbitration clause and to stay the district court litigation. Disregarding the allegations in the amended complaint specifically predicating petitioners' claims on Equitable's failure to pay claims for medical treatment, and narrowly construing the arbitration clause, the district court denied the motion. The Ninth Circuit reversed. After reviewing the specific facts of this case, the Ninth Circuit determined that

the arbitration clause in the Release covered petitioners' claims because "'claims for medical expense reimbursement under the policy' are at the heart of [petitioners'] suit." (Pet. 2a.) The decision is unpublished, and under Ninth Circuit rules thus may not be cited to or by the courts. *See* Ninth Circuit Rule 36-3.

This petition for certiorari followed.

REASONS FOR DENYING THE WRIT

There is nothing about this case that warrants review by this Court. The Ninth Circuit applied this Court's settled principles favoring arbitration in construing the arbitration clause and applying it to the facts of the parties' dispute. The case raises no conflict with any other circuit or any decision of this Court, raises no important federal question, and has no significance except to the parties to this case. At most, petitioners disagree with the court of appeals' interpretation of the specific arbitration clause involved here and the court's application of that clause to the specific facts of this dispute. The Supreme Court, however, is not a forum to resolve quibbles over routine contract disputes. *See* Rule 10, Supreme Court Rules ("A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). The writ should be denied.

A. The Court of Appeals Correctly Applied this Court's Settled Rules for Determining the Scope of an Arbitration Clause

The decision by the Ninth Circuit does not break any new ground. This Court has instructed that "questions of arbitrability must be addressed with a healthy regard for the

federal policy favoring arbitration." *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983).

> The [Federal] Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.

Id. at 24-25; *accord Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 62 (1995). Agreements to arbitrate "are 'generously construed.'" *Mastrobuono*, 514 U.S. at 61 n.7 (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985)).

The Ninth Circuit applied the *Moses H. Cone* standard for determining the scope of an arbitration clause. *See* Memorandum, Pet. 2a, 4a (quoting from and relying on *Moses H. Cone*). Petitioners do not contend that the Ninth Circuit stated an improper rule of law regarding the scope of an arbitration clause. Although petitioners disagree with the Ninth Circuit's application of that rule of law to the specific facts of this case, that is not a ground for review by the Supreme Court. *See* Rule 10, Supreme Court Rules.

In any event, the Ninth Circuit correctly applied the *Moses H. Cone* standard in finding that the dispute was arbitrable, as we show below.

1. Petitioners and Equitable Agreed to a Broad Arbitration Clause

As shown above, the arbitration clause in the Release includes "*any* disagreement(s) . . . regarding payment of claims for medical expense reimbursement under the POLICY, including, *but not limited to*, disagreements regarding whether claims submitted to EQUITABLE are covered claims under the POLICY, and whether CLAIMANTS have reasonably pursued and exhausted the government benefits referred to in Paragraph 7(d) of this RELEASE . . . ."

By using this broad language — "any" disagreement "regarding" payment of claims — the parties intended the range of disputes covered by the arbitration clause to be expansive. "The use of the term 'any' makes it clear that the parties intended the [arbitration] clause to be broad." *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, No. C 98-0639 SI, 1998 U.S. Dist. LEXIS 19364, *15 (N.D. Cal. Dec. 4, 1998), *aff'd*, 207 F.3d 1126 (9th Cir. 2000); *accord North River Ins. Co. v. Allstate Ins. Co.*, 866 F. Supp. 123, 127 (S.D.N.Y. 1994). Moreover, terms like "regarding," such as "with reference to," "in connection with," and "relating to" should be read expansively. *See Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 721 (9th Cir. 1999); *Quackenbush v. Allstate Ins. Co.*, 121 F.3d 1372, 1380 (9th Cir. 1997) (recognizing as "broad in scope" clause requiring arbitration of any dispute "with reference to" the contract); Webster's New Twentieth Century Dictionary 1520 (2d ed. 1979) (defining "regarding" as "respecting," "concerning," or "relating to"); *Chloe Z Fishing Co. v. Odyssey Re (London) Ltd.*, 109 F. Supp. 2d 1236, 1254-55 (S.D. Cal. 2000) (clause requiring arbitration of disputes "concerning any claim under

the [insurance] Policy" was broad in scope and covered "non-contractual claims which implicate the [insurance company's] duties under the . . . policies themselves"); *see also Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 193-94 (1991) (clause requiring arbitration of disputes "regarding" contract is "a broad arbitration provision").

The use of examples of disagreements subject to arbitration prefaced by the phrase "including but not limited to" further shows that the petitioners and Equitable intended a broad reading of the clause. By choosing the "not limited to" language, petitioners and Equitable expressed their intention that the arbitration clause cover *any* dispute regarding the payment of claims — however and for whatever reason that dispute arose regarding the payment of claims.

2. The Claims in Petitioners' Lawsuit Fall Well Within the Scope of the Arbitration Clause

As shown above, petitioners expressly allege in their amended complaint that the basis of each claim is the (mistaken) denial by Equitable of Skye Leonard's claims for medical reimbursement. The Ninth Circuit, therefore, correctly recognized that "claims for medical expense reimbursement under the policy are at the heart of [petitioners'] suit." (Pet. 3a.)

Petitioners contend in their petition, as they did in the Ninth Circuit, that the arbitration clause is not applicable to their lawsuit because Equitable has denied that insurance coverage under the Policy "exists." (ER 28, ¶ 27; *see* Pet. 6.) Petitioners try to draw a distinction between claims that were denied for one reason (such as because a certain procedure was not covered) and claims that were

denied for some other reason (such as because the Policy had lapsed). If nothing else, the "including but not limited to" language quoted above makes clear that the parties did not intend to classify disputes regarding the payment of claims in this manner. Under the arbitration clause, *any* dispute regarding the "payment of claims" must be arbitrated, without limitation to what the dispute regarding claims is about or how that dispute arose. Adoption of the distinction asserted by petitioners would limit the arbitration clause to the first of the two examples of disputes included with the clause, rendering the second example a nullity and conflicting with the express direction that the clause is "not limited to" either of the examples, but applies more broadly to "any" disagreements "regarding" the payment of claims.

The Ninth Circuit correctly concluded that termination of an insurance policy (or to use petitioners' words, a denial that coverage "exists" under the policy) is implicitly or effectively a denial of future claims under the policy and that accordingly, even under petitioners' argument, the dispute is about "claims for medical reimbursement under the policy." (Pet. 3a.) Here, there is a strong connection between the denial of coverage under the policy and the denial of claims, because Equitable actually *did* deny claims submitted for medical expenses under the Policy, and it was that denial or refusal to pay claims which prompted this lawsuit. (ER 28, ¶ 25; *id.* 113-14.) No matter how hard petitioners try to transform the allegations in their lawsuit, the fact remains that claims for medical expenses under the policy "are at the heart" of the lawsuit.

In any event, even if petitioners could raise a doubt about whether the arbitration clause covers the dispute described

in their lawsuit, all such doubts had to be resolved in favor of arbitration. *See Mastrobuono*, 514 U.S. at 62; *Moses H. Cone*, 460 U.S. at 24-25.

B. The Decision by the Court of Appeals Does Not Conflict With The Decisions of Any Other Circuit or this Court

The decision by the Ninth Circuit raises no conflict with the decision of any other circuit court of appeal. Petitioners suggest that different jurisdictions have reached "significantly different results" concerning whether a given dispute was arbitrable. (Pet. 7.) But the only reason the courts may have reached "different results" in these cases was because the cases involved differences in the terms of the arbitration clause and the specific facts concerning the dispute to which the clause was claimed to apply. The cases applied the same settled rule of law (the liberal *Moses H. Cone* standard) to the specific facts of the dispute presented to them. *See Seaboard Coastline Railroad Co. v. Trailer Train Co.*, 690 F.2d 1343, 1348 (11th Cir. 1982) ("we construe arbitration clauses generously, resolving all doubts in favor of arbitration"); *Chloe Z Fishing*, 109 F. Supp. 2d at 1241 (citing *Moses H. Cone*). Although *Swenson's Ice Cream Co. v. Corsair Corp.*, 942 F.2d 1307 (8th Cir. 1991), did not contain any discussion of the standard for arbitration, the court made the uncontroversial determination that a dispute arising from a distribution contract which "contains no language requiring arbitration" was not arbitrable. *See id.* at 1308.

C. The Decision by the Court of Appeals Does Not Raise Any Serious Issue of Federal Law

The decision by the Ninth Circuit does not raise any serious issue of constitutional or federal law. As shown above, the rule governing the scope of an arbitration clause is well settled and the Ninth Circuit applied that settled rule.

Petitioners contend that the decision by the Ninth Circuit raises a constitutional question concerning whether the arbitration clause gave them adequate notice that they were waiving their right to a jury trial. (Pet. 6.) Petitioners did not raise this argument, or any similar argument, in the court of appeals. *See Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 146 n.2 (1970) ("Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them."). The argument is frivolous. Petitioners were aware of the scope of the arbitration clause in the Release when they signed it. The rule requiring arbitration clauses to be liberally construed was settled long before petitioners agreed to the arbitration clause, and as petitioners point out the parties are presumed to rely on existing law when drafting arbitration agreements. (Pet. 7.) Petitioners do not claim that they were unaware of the arbitration clause in the Release or that Equitable misled them with regard to the arbitration clause or its scope. Although petitioners contend that Equitable fraudulently induced them to sign the Release and Settlement Agreement by allegedly intending not to perform under that contract, that claim of "fraud" does not go specifically to the arbitration clause, and this Court has long held that claims for fraud in the inducement of the contract are arbitrable. *See Moses H. Cone*, 460 U.S. at 24-25 (citing *Prima Paint Corp. v. Flood*

& Conklin Mfg. Corp., 388 U.S. 395 (1967)); *accord Chloe Z Fishing*, 109 F. Supp.2d at 1254-55 (clause requiring arbitration of disputes "concerning any claim under the [insurance] Policy" covered tort claims).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

May 15, 2002

Respectfully submitted,

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